

AMENDED ORDINANCE NO. 2008- 04

AN ORDINANCE TO ADD CHAPTER 9.04 ENTITLED SMOKING IN PUBLIC PLACES
AND PLACES OF EMPLOYMENT

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, respiratory disease, and lung cancer;

WHEREAS, at special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease;

WHEREAS, there is a clear and present health and safety risk posed to all employees and patrons of facilities owned and operated in the City of Lafayette by the smoking of cigarettes, cigars, pipes or *any* other tobacco product;

WHEREAS, in creating certain exceptions in this chapter, the Common Council and the City of Lafayette have balanced the needs and desires of businesses and employers, as well as the needs and desires of smokers and non-smokers;

WHEREAS, the City of Lafayette Common Council finds and declares that the purposes of this chapter are: 1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and 2) to promote the ability of nonsmokers to breathe smoke free air and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke; and

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF LAFAYETTE that:

Article 1: A new Chapter 9.04 of the Lafayette City Code entitled SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT is enacted.

Article 2: Smoking in Public Places and Places of Employment

Sec. 9.04.010. Definitions.

The following words and phrases, whenever used in this ordinance, shall be construed as defined in this section:

"Bar" means any building, room or area used primarily for the sale of alcoholic beverages for consumption by guests on the premises and in which the sale of food and the provision of entertainment is merely incidental to the sale of alcoholic beverages.

"Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

"Employee" means any person who is employed by any employer for direct or indirect monetary wages or profit, including those employed full-time, part-time, on a temporary basis, or by contract through a third party.

"Employer" means any person, partnership, corporation, including a municipal corporation, or non profit entity, which employs the services of one or more individual persons.

"Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping", or similar structures.

"Place of Employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a licensed child care, adult day care or health care facility:

"Private Club" means a facility:

- (a) Owned or operated by an association or corporation, which shall:
 - (1) not be operated for pecuniary gain; and
 - (2) consist of a membership:
 - (A) formed as a lodge, local chapter, or corresponding unit of a fraternal order whether or not recognized on a national basis; or
 - (B) comprised of persons who have served in the armed forces of the United States; or
 - (C) formed as a recognized, exclusive association of persons organized for a joint or common purpose for which application for membership, the payment of dues, and self governance by the membership are distinguishing characteristics; and
- (b) where entry into, and use of the facility, is restricted to members and guests of members.

"Public Place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to banks, bars, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food

production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a "public place."

"Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

"Retail Store" means a mercantile establishment, a place of business for selling goods.

"Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. The term does not include retail stores where food or beverages are sold for consumption on the premises or where an area has been set aside on the premises for customers to consume food or beverages.

"Tobacco bars" are establishments that sell or rent tobacco products and devices and derive more than 25% of their income from these sales or rentals.

"Service Line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

"Smoking" means the act of puffing, having in one's possession, holding or carrying a lighted or smoldering cigar, cigarette, pipe, or smoking equipment of any kind, or lighting a cigar, cigarette, pipe or smoking equipment of any kind.

"Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Sec. 9.04.020. Application to City-Owned Facilities.

All enclosed facilities owned by the City of Lafayette shall be subject to the provisions of this chapter, including city vehicles, whether or not they are occupied by more than one person.

Sec. 9.04.030. Prohibition of Smoking in Public Places.

- (a) Smoking shall be prohibited in the following public places and other public places similarly situated, including, but not limited to, the following areas:
 - (1) Elevators.
 - (2) Restrooms, lobbies, reception areas, hallways and any other common-use areas.
 - (3) Buses, taxicabs, and other means of public transit under the authority of the City of Lafayette, and ticket, boarding, and indoor waiting areas of public transit depots.

- (4) Service lines.
- (5) Retail stores.
- (6) All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public.
- (7) Restaurants and bars.
- (8) Public areas of galleries, libraries, and indoor areas of museums.
- (9) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance.
- (10) Sports arenas and convention halls, including bowling facilities.
- (11) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city.
- (12) Hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
- (13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (14) Polling places.
- (15) Places of employment.
- (b) Smoking shall be allowed outdoors, except where prohibited by other applicable laws, provided that, however, smoking shall be prohibited within ten (10) feet of any entrance to a non-exempt public place so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or any other means.
- (c) Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

Sec. 9.04.040 Policies Regarding Smoking in Places of Employment.

- (a) It shall be the responsibility of employers to provide a smoke-free workplace for all employees.
- (b) The smoking policy shall be communicated to all employees.
- (c) Each employer having an enclosed place of employment located within the city shall adopt, implement, make known and maintain a written smoking policy, which shall contain the following requirements: Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles with more than one occupant, and all other enclosed facilities.

All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

Sec. 9.04.050. Where Smoking Not Regulated.

- (a) Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:
 - (1) Private residences, except when used as a licensed child care, adult day care or health care facility.
 - (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided however, that not more than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated and so long as the smoking does not directly affect any non smoking rooms and areas of the building. Once designated, the status of rooms as smoking or non-smoking may not be changed, except to add additional non-smoking rooms.
 - (3) Retail tobacco stores as defined in section 9.04.010, so long as the smoking does not directly affect smoking prohibited areas.
 - (4) Private clubs as defined in section 9.04.010. However, smoking shall be prohibited when the premises is temporarily used by the general public for a particular function.
 - (5) Tobacco bars as defined in section 9.04.010, so long as the smoking does not directly affect smoking prohibited areas.
 - (6) Outdoor areas of places of employment.
 - (7) Outdoors, except where prohibited by other applicable laws.
 - (8) Any business that, during all hours of operation:
 - a. allows no customer to enter any area of the business therein who is under the age of twenty-one (21); and
 - b. employs no person in any area of the business therein who is under the age of twenty-one (21); and
 - c. is not physically located within a business otherwise required to be smoke free by this Chapter.
- (b) Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

Sec. 9.04.060: Posting of Signs--Removing of Paraphernalia.

- (a) "No Smoking" signs or the international No Smoking symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other area where smoking is prohibited by this chapter by the owner, operator, manager or other person having control of such building or other area.
- (b) Every public place where smoking is prohibited by this chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- (c) Any public place or place of employment exempted from this chapter shall clearly and conspicuously post the following sign at every entrance: "Warning. Tobacco smoke may be present." In addition, any exempt business under Section 9.04.050(3), (5), and (8) shall be required to post clearly and conspicuously at every entrance the following sign: "Warning: This is a Smoking Establishment."
- (d) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this chapter by the owner, operator, manager or other person having control of such area.

Sec. 9.04.070. Enforcement.

- (a) The city shall seek to obtain voluntary compliance with this chapter by means of publicity and education programs, and the issuance of warnings, where appropriate.
- (b) Enforcement of this chapter shall be implemented by the Mayor's Office, or designee(s).
- (c) Any citizen who desires to register a complaint under this chapter may initiate enforcement with the department or positions designated by the Mayor's Office.
- (d) Upon finding that any provision of this chapter has been violated, the enforcement designee(s) shall issue a Notice of Violation (NOV) to the person(s) responsible for the violation. The NOV shall be in writing and shall be served upon the person(s) responsible for the violation by one or more of the following methods: delivery in person, certified or first class mail. The NOV shall state:
 - (1) The location of the violation;
 - (2) The nature of the violation;
 - (3) The fine assessed for the violation; and
 - (4) That the fine is paid at the city Clerk's office.

Sec. 9.04.080. Violations and Penalties.

- (a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of its provisions.
- (b) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to knowingly or willfully allow smoking to occur where prohibited by this chapter. It is a defense to this section if the foregoing persons or their employees act in a reasonable and timely manner to personally inform the violator of the prohibition and request that he or she refrain from smoking.
- (c) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.
- (d)
 - (1) A person who smokes in an area where smoking is prohibited by the provisions of this chapter shall be guilty of an infraction, punishable by a fine of fifty dollars (\$50).
 - (2) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this chapter shall be guilty of an infraction, punishable by:
 - (A) A fine of fifty dollars (\$50) for the first violation.
 - (B) A fine of one hundred dollars (\$100) for the second violation at the same place.
 - (C) A fine of two hundred fifty dollars (\$250) for each additional violation at the same place.
 - (3) Each day on which a violation of this chapter occurs shall be considered a separate and distinct violation.

- (e) All penalties shall be processed through the ordinance violations bureau established by Chapter 1 Sec. 02 of the Lafayette City Code. If, after multiple violations by the same person or at the same business, the city legal and law enforcement departments have reason to believe that the fines will not be effective in enforcing this chapter, then the city legal department shall be empowered to seek any other remedies provided by law.

Sec. 9.04.090. Public Education.

The City may engage in programs to explain and clarify the purposes and requirements of this chapter to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such programs may include publication of a brochure for affected businesses and individuals explaining the provisions of this chapter.

Sec. 9.04.100. Other Applicable Laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 9.04.110. Severability.

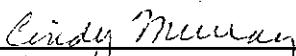
If any section, sentence or provision of this chapter, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter we declare to be severable.

Article 3: The enforcement provisions of this ordinance shall take effect on the 1st day of September, 2008.

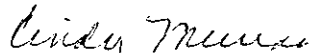
ADOPTED AND PASSED BY THE COMMON COUNCIL of the city of Lafayette, Indiana
this 5 day of May, 2008.


Ronald Campbell, President

ATTEST:


Cindy Murray, City Clerk

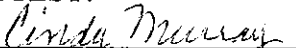
Presented by me to the Mayor of the City of Lafayette, Indiana, for his approval and signature
this 5 day of May, 2008.


Cindy Murray, City Clerk

This Ordinance approved and signed by me on this 5 day of May, 2008.


Tony Roswarski, Mayor

ATTEST:


Cindy Murray, City Clerk

Sponsored by: Council Member Ronald Campbell, Council Member Lon Heide, Council
Member Steve Meyer.